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11 USC § 350(b)
11 USC § 546(a)(2)
Fed. R. Civ. P. 60(b)
Limitations

Michael A. Grassmueck, Inc.
v. WFS Financial, Inc.
(In re Sergio Cortez and
Georgina Rojas Soto)

Adv. No. 00-3157-rld
Case No. 399-35924-rld7

11/22/00 RLD Published (255 BR 324)

The debtors' chapter 7 case was closed after the trustee filed a "no asset" report. The case subsequently was reopened on trustee's motion "to administer assets" pursuant to 11 U.S.C. § 350(b).

The trustee then filed a complaint to avoid as a preference the defendant's security interest in debtors' vehicle. It was undisputed that defendant submitted the title application (1) more than 20 days after debtors took possession of the vehicle, and (2) within 90 days prior to the debtors' voluntary petition.

The court granted defendant's motion for summary judgment on the basis that the trustee's complaint was barred by the limitations period set forth in 11 U.S.C. § 546(a)(2), which provides that lien avoidance/preference actions "may not be commenced after the earlier of - the time the case is closed or dismissed." The court rejected the trustee's argument that the reopening of a case to administer assets always trumps the limitation set forth in § 546(a)(2) which arises when a case is closed. The court held that where, as here, the trustee filed a "not asset" report which resulted in closing of the case, notwithstanding the trustee's knowledge of the existence of the potential avoidance action because of complete and clear disclosure of the facts by the debtors in their schedules, § 546(a) bars the trustee from pursuing the avoidance action. Further, the court found no "inadvertance" to support relief pursuant to Fed. R. Civ. P. 60(b).

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	
)	
SERGIO CORTEZ and GEORGINA ROJAS)	Bankruptcy Case
SOTO,)	No. 399-36368-rld7
)	
Debtors.)	
)	
MICHAEL A. GRASSMUECK, INC.,)	Adv. Proc. No. 00-3157-rld
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
WFS FINANCIAL, INC.,)	
)	
Defendant.)	
)	

On November 9, 2000, the court heard argument on the defendant WFS Financial, Inc.'s ("WFS") motion for summary judgment, Russell D. Garrett of Bullivant Houser Bailey appearing in behalf of WFS, and David B. Mills of Hammons & Mills appearing in behalf of the chapter 7 trustee plaintiff, Michael A. Grassmueck, Inc. (the "Trustee"). This is a core proceeding over which the court has

1 jurisdiction pursuant to 28 U.S.C. Sections 157 and 1334 and United
2 States District Court of Oregon Local Rule 2100-1. In deciding this
3 matter, I have considered carefully the arguments of counsel, the
4 submissions of the parties, including the Affidavits of Michael A.
5 Grassmueck, Russell D. Garrett and David B. Mills, the documents on
6 file in the subject adversary proceeding and main case files, and
7 applicable legal authorities.

8 FACTUAL BACKGROUND

9 The material facts in this case are not in dispute. Sergio
10 Cortez and Georgina Rojas Soto (the "Debtors") set this matter in
11 motion by filing a chapter 7 bankruptcy petition on August 19, 1999.
12 The Debtors scheduled their interest in a 1999 Ford Escort
13 automobile (the "1999 Ford") in Schedule B and the security interest
14 of WFS in the 1999 Ford in Schedule D to their bankruptcy petition.
15 The Debtors' Statement of Intent states their intent to surrender
16 the 1999 Ford.

17 Since the commencement of the Debtors' chapter 7 case, the
18 Trustee has been the duly qualified chapter 7 trustee.

19 The Debtors' first meeting of creditors ("First Meeting of
20 Creditors") originally was scheduled for September 16, 1999. On
21 September 14, 1999, the Debtors filed a motion to reschedule the
22 First Meeting of Creditors, and it was reset by the court to
23 October 18, 1999.

24 On September 21, 1999, the Trustee filed with the court
25 Trustee's Request That Case Not Be Dismissed For Failure To Attend
26 341(a) Meeting (the "Request"), based upon the Trustee's

1 determination that "assets appear to be available for
2 administration." The Trustee stated in the Request that "Trustee
3 has identified a possible voidable security interest in debtors
4 [sic] vehicle, a 1999 Ford Escort."

5 The First Meeting of Creditors did not take place on
6 October 18, 1999, but was reset again to November 4, 1999. The
7 Trustee presided over the Debtors' First Meeting of Creditors on
8 November 4, 1999, at the U.S. Trustee's office in Portland, Oregon,
9 and had an opportunity to examine, and did examine, the Debtors
10 concerning their assets and liabilities. At the First Meeting of
11 Creditors, the Debtors provided documents to the Trustee pertaining
12 to the 1999 Ford, including copies of the purchase agreement and
13 motor vehicle registration.

14 On November 5, 1999, the Trustee signed and filed an
15 Inventory and Report of No Assets with the court. Local Bankruptcy
16 Rule 2015-1.A.1. requires that a trustee in a chapter 7 case file an
17 original Inventory and Report of Assets "immediately after
18 completion of the §341(a) meeting in a 'no-asset' case, or within 11
19 days after completion of such meeting in an asset case."

20 On November 10, 1999, the Trustee's office requested the
21 title history for the 1999 Ford from the Oregon Department of Motor
22 Vehicles.

23 On November 18, 1999, the court entered an order (1)
24 discharging the Debtors, (2) discharging the Trustee, and (3)
25 closing the Debtors' chapter 7 case as a "No Asset" case, which
26 order was served on all interested parties.

1 On December 10, 1999, the Trustee filed a motion to reopen
2 the Debtors' bankruptcy case as in the best interests of creditors,
3 to allow for administration of assets based upon the Trustee's
4 determination that WFS' security interest in the 1999 Ford was
5 voidable.

6 The court scheduled a hearing on the Trustee's motion to
7 reopen for January 13, 2000, which was noticed to creditors and
8 interested persons. Following the hearing on the Trustee's motion,
9 the court entered an order reopening the case "for further
10 administration."

11 On January 19, 2000, the Trustee filed an Inventory and
12 Report of Assets, identifying a "voidable security interest in a
13 1999 Ford Escort."

14 By letter dated January 31, 2000, the Trustee's attorney
15 contacted the attorney for WFS, advising him of the claims set forth
16 in the Complaint in this adversary proceeding and inquiring
17 regarding representation. On March 8, 2000, WFS' attorney responded
18 to the January 31, 2000 letter, requesting additional time to advise
19 regarding WFS' position. Following further correspondence between
20 counsel for the parties, on June 20, 2000, the Trustee filed the
21 Complaint in this Adversary Proceeding, seeking to avoid WFS'
22 security interest in the 1999 Ford because WFS submitted the 1999
23 Ford title application more than 20 days after the Debtors took
24 possession of the 1999 Ford.

25 The Trustee states that ordinarily, "no asset" cases are not
26 closed until approximately 60 days following the date initially set

1 for the first meeting of creditors. The Trustee further states that
2 even in cases where the Trustee has a basis for believing that there
3 is a voidable security interest in a vehicle, such cases not
4 uncommonly are designated as "no asset" cases in order "to allow the
5 closing of the case and to avoid unnecessary administration expenses
6 at the clerk's office." During the 60 day period between the date
7 of the first meeting of creditors and the typical closing date, the
8 Trustee investigates the issue of avoidability by obtaining an
9 Oregon Department of Motor Vehicles report. If it is determined
10 that a questioned security interest is avoidable, the Trustee files
11 an Amended Inventory and Report of Assets that keeps the case open.

12 In this case, the Trustee asserts that his original filing of
13 the "no assets" report was "a mistake and inadvertent." He blames
14 the two adjournments of the First Meeting of Creditors for
15 disrupting his timetable, with the closing of the Debtors'
16 bankruptcy case catching him off guard.

17 ISSUES

18 WFS asserts, and the Trustee disputes, that WFS is entitled
19 to summary judgment on its affirmative defenses to the Trustee's
20 claims in this adversary proceeding because (1) the statute of
21 limitations in 11 U.S.C. §546(a)(2) ran when the Debtors' chapter 7
22 case first was closed on November 18, 1999, or in the alternative,
23 (2) the Trustee's claim was abandoned as an asset of the estate when
24 the case first closed under 11 U.S.C. §554(c).

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1 reopened. Without reference to any of the limitations provisions of
2 the Bankruptcy Code, section 350(b) provides that "[a] case may be
3 reopened in the court in which such case was closed to administer
4 assets, to accord relief to the debtor, or for other cause."

5 [Emphasis added.] In fact, the Debtors' bankruptcy case was reopened
6 on the Trustee's motion to allow for further administration.

7 The Trustee argues that the reopening of a case to administer
8 assets always trumps the provisions of section 546(a)(2), and the
9 "real" statute of limitations for trustee actions under sections
10 544, 545, 547, 548 and 553 of the Bankruptcy Code is the alternative
11 set of limitations set forth in section 546(a)(1)². In the
12 Trustee's view, section 546(a)(2) only applies where no further
13 assets are found to administer after case closure.

14 Accepting either party's argument deprives one or the other
15 provision of the Bankruptcy Code of meaning. A number of courts
16 have held, and WFS concedes, that the limitations provisions of
17 section 546(a)(2) do not preclude actions to pursue assets in
18 reopened cases where the failure to discover or administer assets
19 prior to original case closure was the result of ambiguity or
20 nondisclosure in debtors' schedules. See, e.g., In re Petty, 93
21 B.R. 208, 211-12 (9th Cir. BAP 1988); In re Serrato, 214 B.R. 219,

22
23 ² Section 546(a)(1) provides: "An action or proceeding under
24 section 544, 545, 547, 548, or 553 of this title may not be
25 commenced after the earlier of-- (1) the later of-- (A) 2 years
26 after the entry of the order for relief; or (B) 1 year after the
appointment or election of the first trustee under section 702,
1104, 1163, 1202, or 1302 of this title if such appointment or such
election occurs before the expiration of the period specified in
subparagraph (A)...."

1 226 (Bankr. N.D. CA 1997); White v. Boston, 104 B.R. 951 (S.D. IN
2 1989). Likewise, a bankruptcy case can be reopened to administer an
3 asset that was not located or pursued through mistake, inadvertence
4 or excusable neglect pursuant to Fed. R. Civ. P. 60(b), incorporated
5 in Fed. R. Bankr. P. 9024. See, e.g., In re Schmid, 54 B.R. 78, 80-
6 81 (Bankr. D. OR 1985). Such ambiguity or nondisclosure, or
7 excusable neglect constitutes the requisite "cause" to allow for a
8 bankruptcy case to be reopened for administration of assets pursuant
9 to section 350(b).

10 Given these exceptions to section 546(a)(2) operating as an
11 absolute bar to trustees pursuing lien avoidance claims in reopened
12 cases, WFS nevertheless argues that the original case closing should
13 preclude the Trustee from proceeding against WFS in the
14 circumstances of this particular case. The Debtors clearly included
15 the 1999 Ford on their Schedule B and identified WFS' security
16 interest in the 1999 Ford on Schedule D. There was no failure to
17 disclose nor ambiguity in disclosure. In fact, prior to the First
18 Meeting of Creditors, the Trustee had "identified a possible
19 voidable security interest" in the 1999 Ford, as reflected in the
20 Request.

21 At the First Meeting of Creditors, the Trustee had the
22 opportunity to examine the Debtors concerning the 1999 Ford and WFS'
23 security interest therein, and the Debtors delivered to the Trustee
24 copies of the 1999 Ford purchase agreement and motor vehicle
25 registration. Yet, on the following day, the Trustee signed and
26 filed an Inventory and Report of No Assets with the court.

1 The Trustee asserts that the filing of the "no asset" report
2 was a mistake and inadvertent. A mistake, maybe; but inadvertent,
3 no, as Mr. Grassmueck stated in his affidavit that cases in which
4 avoidable security interests are suspected are "not uncommonly
5 designated" as "no asset" cases prior to receiving reports from the
6 Oregon Department of Motor Vehicles. Nothing in the Local
7 Bankruptcy Rules of the Oregon Bankruptcy Court requires that a "no
8 asset" report be filed in a case where the trustee is still
9 investigating the availability of assets for administration.

10 Relying on an expected gap of approximately 60 days between
11 the First Meeting of Creditors and case closure, the Trustee may not
12 have intended that the Debtors' bankruptcy case be closed prior to
13 pursuit of a lien avoidance claim against WFS. However, by filing
14 the "no asset" report hard on the heels of the First Meeting of
15 Creditors, the Trustee took the risk that the case would be closed
16 before the Trustee knew whether it had a claim against WFS or not.

17 The Trustee argues that any errors of omission in the
18 original "no asset" report were wiped away when the Debtors'
19 bankruptcy case was reopened because a case is not properly and
20 finally closed for section 546(a)(2) purposes until all assets have
21 been fully administered. Accordingly, absent passing of the section
22 546(a)(1) limitations, all unrealized claims should be revived for
23 administration in a reopened case. However, as noted in Collier on
24 Bankruptcy, §546.02[2][b] at p. 546-17 (15th ed. revised 2000),
25 since section 350(b) provides that a bankruptcy case always can be
26 reopened for cause, grafting a "properly and finally" closed

1 standard that is not provided for in the Bankruptcy Code on the
2 limitations provisions of section 546(a)(2) is questionable.

3 Besides, imputing such far-reaching implications to a simple
4 order reopening a case is not justified. "The reopening of a case
5 is merely a ministerial or mechanical act which allows the court
6 file to be retrieved from the stacks of closed cases to enable the
7 court to receive a new request for relief; the reopening, by itself,
8 has no independent legal significance and determines nothing with
9 respect to the merits of the case." In re Germaine, 152 B.R. 619,
10 624 (9th Cir. BAP 1993). Also see In re Woods, 173 F.3d 770, 777
11 (10th Cir. 1999); and In re DeVore, 223 B.R. 193, 198 (9th Cir. BAP
12 1998).

13 In this case, the court granted the Trustee's motion to
14 reopen the Debtors' bankruptcy case "for further administration,"
15 but did not make any determination thereby that the Trustee's action
16 against WFS could proceed.

17 It is ironic in this case that the Trustee seeks to be saved
18 from the running of a statute of limitations deadline in order to
19 pursue claims that do not arise from any alleged fraud or misconduct
20 by WFS but result only from the fact that WFS may have missed the
21 20-day deadline for filing the 1999 Ford title application with the
22 Oregon Department of Motor Vehicles. I find that there is no
23 ambiguity or failure of disclosure in the Debtors' schedules either
24 as to the 1999 Ford or WFS' security interest therein that
25 constitutes cause for reopening the Debtors' bankruptcy case to
26 allow the Trustee to proceed with its claims in this adversary

1 proceeding. Further, I find that it was a mistake in the
2 circumstances of this case for the Trustee to file a "no asset"
3 report immediately following the First Meeting of Creditors when the
4 Trustee already had identified the possibility of a voidable
5 security interest in the 1999 Ford in the Request and through
6 examination of the Debtors and copies of their purchase agreement
7 and motor vehicle registration for the 1999 Ford.

8 However, I do not find that the Trustee's filing of the "no
9 asset" report, that arguably triggered case closure, is such a
10 mistake, inadvertence or excusable neglect as would constitute just
11 cause for reopening the Debtors' bankruptcy case for administration
12 of the Trustee's claims against WFS under Fed. R. Civ. P. 60(b)(1)
13 and Fed. R. Bankr. P. 9024. The Trustee filed the original
14 Inventory and No Asset Report according to its "not uncommon"
15 practice. In these circumstances, the filing of the "no asset"
16 report was not an inadvertent error. That LBR 2015-1.A.1. sets time
17 limits for filing an Inventory and Report of Assets does not alter
18 this analysis.

19 The Trustee took the risk that the case would close and the
20 limitations period in section 546(a)(2) would run prior to the
21 Trustee verifying whether it had a lien avoidance claim against WFS
22 or not, and the limitations period ran prior to the filing of an
23 amended assets report and the Complaint in this adversary
24 proceeding. Accordingly, I find that WFS is entitled to summary
25 judgement on its section 546(a)(2) affirmative defense to the
26 Trustee's Complaint.

Having fully determined this matter on the basis of WFS' first affirmative defense, I do not reach WFS' further argument that the claims asserted in the Trustee's Complaint were abandoned pursuant to section 554(c).

CONCLUSION

Based upon the evidentiary record in this matter, as reflected in the submissions of the parties and the documents on file in the main case and adversary proceeding files, and applicable law, I find that WFS has established as a matter of law that the claims asserted by the Trustee in the Complaint in this adversary proceeding are barred by the statute of limitations set forth in section 546(a)(2) of the Bankruptcy Code. This Memorandum Opinion contains the court's findings of fact and conclusions of law, which will not be stated separately.

WFS' motion for summary judgment is granted. Counsel for WFS shall prepare and submit within ten (10) days following the date of entry of this Memorandum Opinion a form of judgment consistent herewith.

RANDALL L. DUNN
Bankruptcy Judge

cc: Michael A. Grassmueck
David B. Mills
Russell D. Garrett
U.S. Trustee

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